

Exhibit D

Low-Mod Fund Excess Surplus

Excess Surplus is defined and calculated based on provisions in Health & Safety Code Section 33334.12. Excess Surplus is determined on the first day of each fiscal year. The calculation requires comparing the sum of property tax increment deposited over the previous four fiscal years against the agency's adjusted beginning balance (prior year's ending adjusted unencumbered balance) to determine which amount is greater. Agencies are allowed to adjust their unencumbered balance to exclude the amount of unspent proceeds from the sale of bonds and the difference between the price of land sold during the reporting period compared to the land's fair market value. By statutory definition, Excess Surplus exists when the adjusted unencumbered balance exceeds the greater of: (1) \$1 million or (2) the combined amount of property tax increment revenue deposited over the preceding four fiscal years.

For FY 2005-06, 52 agencies reported having Excess Surplus totaling \$111,544,634, considerably more than the \$70 million reported in FY 2004-05. When Excess Surplus is identified, the law requires agencies to either: (1) transfer Excess Surplus to the local county housing authority within one year or (2) spend or encumber all the remaining Excess Surplus within two additional years from the time limit given to transfer funds to the county housing authority. Health and Safety Code Section 33334.12(e) specifies severe penalties for not eliminating Excess Surplus within three years: (1) limiting an agency's actions such as preventing the agency from encumbering and spending its funds and (2) charging the agency's other (non-housing) funds an amount equal to 50 percent of the amount of Excess Surplus that must be deposited to the Low-Mod Fund.

Excess Surplus and provisions relating to penalties were enacted into law in 1993 (Chapter 942, AB 1290) with some provisions amended in 1999 and 2001. To remedy problems in correctly determining and reporting Excess Surplus, Chapter 442, Statutes of 1999 (AB 634), requires the agency's independent auditor to calculate Excess Surplus based on audit guidelines prescribed by the State Controller's Office (SCO) in consultation with the Department and to report the existence of Excess Surplus in the agency's annual audit. In addition, the SCO and the Department must be provided a copy of the agency's independent annual audit.

Exhibit D (continued)

In 2001, a provision was added to redevelopment law (Chapter 741, Statutes of 2001, SB 211) to further discourage accumulation of Excess Surplus. As a result, before an agency can amend its redevelopment project area plan to extend certain time limits to incur debt and continue to receive property tax increment, the agency must first submit data to enable the Department to confirm the agency has not accumulated Excess Surplus.

Although some agencies have reported carrying excess surplus for a three year period and longer, to date, based on agencies' annual reports, the Department has not been made aware of any agencies being subject to any penalties. Of the 52 agencies reporting Excess Surplus this year, only ten submitted the "Excess Surplus Expenditure Plan" required by H&SC 33334.10(a).

After the FY 2005-06 six-month reporting due date (December 31st) passed, the Department contacted all 52 agencies reflecting Excess Surplus requesting verification and other appropriate information. Agency responses will determine whether the Department will take additional action such as conducting its own agency audit to verify Excess Surplus and whether an agency is subject to any penalties.